STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION	)	
On Its Own Motion	)	
	)	**00-0700**
IILLINOIS BELL TELEPHONE COMPANY	)	
	)	
Investigation Into Tariff Providing	)	
Unbundled Local switching With	)	
Shared Transport	)	

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

MATTHEW L. HARVEY
DAVID A. NIXON
MARGARET T. KELLY
MARY J. STEPHENSON
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 NORTH La SALLE STREET
STE. C-800
CHICAGO, ILLINOIS 60601
312 / 793-2877

September 20, 2001

The Staff of the Illinois Commerce Commission ("the Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned matter.

The Staff's Reply Brief will respond specifically to arguments raised by Ameritech Illinois (hereafter "Ameritech) in its Initial Brief in this proceeding, except where otherwise noted. To the extent that the Staff does not address an argument in this Reply Brief that was raised in the Staff's Initial Brief, this should not be deemed a waiver, but rather the Staff's arguments in its Initial Brief should be deemed realleged herein.

I. The Commission Should Require Ameritech to Combine For Requesting CLECs All Elements It Ordinarily Combines for Itself

A. State Law Requires Ameritech to Combine Ordinarily Combined Elements

Ameritech's assertion that state law does not require it to combine UNEs, *see* Ameritech IB at 75-76, borders upon the frivolous. Ameritech states that CLECs might argue that Section 13-801(d)(3) requires Ameritech to combine UNEs for them[1], but the Commission should not accept this argument, because another PUA provision, Section 13-801(a), requires the Commission to act in a manner consistent with federal law. Id. at 76. In advancing this argument, Ameritech scrupulously avoids, as it must, any reference to the text of Section 13-801(d)(3). Id.

In fact, Section 13-801(d)(3) provides in relevant part that "an incumbent local exchange carrier shall combine [for a requesting CLEC] any sequence of unbundled network elements that it ordinarily combines for itself…[.]" 220 ILCS 5/13-801(d)(3). This provision is clear and not ambiguous in any way. Its plain text reveals its clear meaning, which is that Ameritech, and any other ILEC, must combine for a requesting CLEC any sequence of unbundled network elements that it ordinarily combines for itself. No reasonable alternative construction can be advanced in good faith. When a statute is plain and unambiguous, as is the case here, a court or tribunal should not construe it to include exceptions or limitations that depart from its plain meaning, even if such exceptions or limitations are beneficial or desirable. Inland Real Estate Corp. v. Village of Palatine, 107 Ill. App. 3d 279, 283 (1st Dist. 1982). Accordingly, the Commission should construe Section 13-801(d)(3) to mean precisely what it clearly does mean – that Ameritech is required to combine for a requesting CLEC any sequence of elements that it ordinarily combines for itself.

Moreover, as the Staff noted in its Initial Brief in this proceeding, Ameritech simply cannot raise a preemption argument before this Commission. Staff IB at 66-67. First, the state statute is clear, and the Commission, as a creature of state statute, must follow it. Second, Section 13-801(a) of the Public Utilities Act, upon which Ameritech places its hopes, provides that:

> This Section provides additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission. A telecommunications carrier not subject to regulation under

[1] The Joint CLECs do indeed make this argument. Joint CLEC IB at 44.

> an alternative regulation plan pursuant to Section 13-506.1 of this Act shall not be subject to the provisions of this Section, to the extent that this Section imposes requirements or obligations upon the telecommunications carrier that exceed or are more stringent than those obligations imposed by Section 251 of the federal Telecommunications Act of 1996 and regulations promulgated thereunder.
>
> 220 ILCS 5/13-801(a)

It is clear from this provision that the General Assembly, in enacting specific combination requirements in Section 13-801(d)(3), held the opinion that the Section 13-801(d)(3) combination requirement was not preempted by federal law, inasmuch as it clearly deemed Section 13-801 to "provide[] additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission." 220 ILCS 5/13-801(a). Had the General Assembly intended, as Ameritech appears to assert, to enact a statute that does nothing more than reiterate federally imposed ILEC obligations, the remaining sections, which recite in detail the state imposed ILEC obligations, would be meaningless surplusage. This is inconsistent with the well-established rule of statutory construction that requires a court or tribunal to ascribe some reasonable meaning to each provision, clause and word of a statute if possible. People v. Fabing, 143 Ill. 2d 48, 54 (1991). Accordingly, the Commission must assume that the General Assembly meant something by enacting Section 13-801(d)(3). Moreover, the Commission should conclude that the General Assembly meant what it said: that "an incumbent local exchange carrier shall combine [for a requesting CLEC] any sequence of unbundled network elements that it ordinarily combines for itself…[.]" 220 ILCS 5/13-801(d)(3). Accordingly, the Commission

must follow the General Assembly's direction in this regard. As a matter of state law, Illinois ILECs subject to alternative regulation must combine all elements ordinarily combined.

As an aside, the Staff notes that, if Ameritech finds the application of Section 13-801 onerous, it may seek relief from the allegedly burdensome obligations imposed by that section through the simple expedient of petitioning for a return to rate-of-return regulation. Ameritech would thus be exempt from Section 13-801 entirely. 220 ILCS 5/13-801(a). The General Assembly clearly intended Section 13-801 to apply only to those ILECs that are regulated under alternative regulation plans as provided for in Section 13-506.1 of the Public Utilities Act, which is something that Ameritech *elected* to seek and obtain. *See* 220 ILCS 5/13-506.1, 13-801(a). In other words, the General Assembly has determined that the *privilege* of alternative regulation – which has been extraordinarily profitable for Ameritech – should have certain obligations attached to it. To the extent that Ameritech seeks to relieve itself of those obligations, it can easily do so, by declining alternative regulation. However, Ameritech cannot argue that the General Assembly is imposing an unusual burden upon it; rather, it must concede that the General Assembly is merely requiring it to undertake an obligation as part of a legislatively-conferred benefit[2].

Third, to the extent that Ameritech believes that state law is preempted, it has a remedy available to it. Specifically, as the Staff noted in its Initial Brief,

[2] This consideration also defeats Ameritech's argument that it ought to be treated no differently than GTE, as a matter of equal protection and "fair play". Ameritech IB at 75-76. Ameritech has in fact sought out different treatment, a fact the General Assembly recognized.

Staff IB at 66 *et seq*., Ameritech may petition the FCC under Section 253(d) of the federal Telecommunications Act of 1996, to preempt Section 13-801(d)(3), on the grounds that it violates, or is inconsistent with, the federal Act. 47 USC 253(d). However, that remedy simply cannot be obtained before this Commission, which enforces a state law that, in this case, clearly and unambiguously requires Ameritech to combine elements ordinarily combined in its network. 220 ILCS 5/13-801(d)(3).

The Commission, as a creature of the General Assembly, enforces state law, which in this case could not be clearer or less ambiguous. It requires Ameritech to combine for a requesting CLEC those elements that it ordinarily combines for itself. The Commission should – indeed, must – require precisely this.

Ameritech attempts to divert attention from this fatal defect in its position by stating that the Commission has never before required it to combine uncombined elements. This assertion is nothing more than an attempt to wish the *TELRIC Order* out of existence. In the *TELRIC Order*, the Commission noted that:

> As stated in our [Wholesale Order], … the offering of end-to-end bundling is consistent with the requirements of the 1996 Act. The Commission also agrees with Staff's position that there are significant benefits to the availability of end-to-end network element bundling as a means of provisioning local service. For example, with the availability of end-to-end network element bundling, the new entrant will not be tied to the incumbent LEC's retail price structure. Therefore, it can provide end users with a wider array of service offerings and pricing options.
>
> TELRIC Order at 125.

Ameritech's argument is, in essence, "we want to be treated equally with other carriers, except as to alternative regulation."

It is difficult to see how the *TELRIC Order* does not support the proposition that ILECs are required to bundle previously uncombined elements; this must be the case if the phrases "offering of end-to-end bundling" or "offering of end-to-end network element bundling" are to have *any* meaning whatever. Moreover, clarity on this point is provided by the Proposed Order in ICC Docket No. 98-0396, which was recently issued. There, the Administrative Law Judge recommends that the Commission adopt an Order that states:

> We agree with AT&T, MCI WorldCom and Z-Tel that we have the legal authority to order Ameritech to provide combinations of unbundled network elements ordinarily combined in Ameritech's network, and that public policy not only supports, but commands, that we require Ameritech to provide such combinations if we are to promote mass market competition for residential and small business customers in Illinois. We therefore require Ameritech to provide to CLECs combinations of unbundled network elements that Ameritech ordinarily combines for its own use or for the use of its end user customers, including the unbundled network element Platform and Enhanced Extended Links, or EELs. This includes, of course, providing the UNE-Platform to CLECs for the purpose of serving new lines and additional, or second, lines to their customers. Given that Ameritech ordinarily combines these elements in its network for its own use or for the use of its end user customers, we find that there are no legal or technical impediments to requiring Ameritech to provide the UNE-Platform for new and second lines.
>
> Proposed Order at 93, ICC Docket No. 98-0396

Accordingly, Ameritech cannot assert that the Commission would be departing from existing principles by requiring it to combine ordinarily combined elements.

B. Federal Law Does Not Prohibit the Commission from Requiring Ameritech to Combine Ordinarily Combined Elements

Ameritech appears to assert that federal law absolutely prohibits any rule or statute requiring an ILEC to combine elements ordinarily, but not currently, combined. Ameritech IB at 76. Ameritech further contends that, this being allegedly the case, the Commission has no alternative to following federal precedent unswervingly. Ameritech IB at 68 *et seq*.

Both of these assertions misstate the law. Moreover, both assertions are an attempt to divert attention from – and avoid the application of – a state law that clearly requires Ameritech to combine previously uncombined, but ordinarily combined, elements.

Federal law in this area can be fairly said to be in a state of flux. The Eighth Circuit has ruled that Section 251(c)(3) of the Telecommunications Act does not require ILECs to combine previously uncombined elements, declining to reconsider a previous ruling on the issue. Iowa Utilities Board v. FCC, 219 F.3d 744, 759 (8th Cir. 2000); *petition for cert. granted,* FCC v. Iowa Utilities Board, -- U.S. --, 148 L. Ed. 2d 788, 121 S. Ct. 878 (2001). The Ninth Circuit has criticized the Eighth Circuit's reasoning, noting that the Supreme Court "firmly stated that the Act's mention of 'unbundled access' does not even 'remotely imply' that elements must be provided only in uncombined form and never in combined form[,]" and that the Eighth Circuit's decision was therefore defective. MCI Telecommunications v. US West, 204 F.3d 1262, 1268 (9th Cir. 2000), *citing* AT&T v. Iowa Utilities Board, 525 U.S. 366, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999). The Supreme Court has granted certiorari on this issue, and the matter is

pending before it. FCC v. Iowa Utilities Board, -- U.S. --, 148 L. Ed. 2d 788, 121 S. Ct. 878 (2001).

Based upon this split among the circuits, reference to the Supreme Court's initial decision upon this point is in order. In AT&T v. Iowa Utilities Board, the Supreme Court found that Section 251(c)(3) does not bear the interpretation Ameritech ascribes to it. Rather, the Supreme Court noted that it was "entirely reasonable" for the FCC to conclude, in promulgating rules to implement section 251(c)(3), that the text of the section does not compel the conclusion, advanced by ILECs, that network elements need only be provided uncombined in discrete pieces. AT&T v. Iowa Utilities Board, 525 U.S. 366, 142 L.Ed. 2d at 858. The Supreme Court noted that the statute "does not say, or even remotely imply, that elements *must* be provided only in this fashion and never in combined form." Id., (emphasis in original). The Court was likewise not "persuaded by the incumbents' insistence that the phrase 'on an unbundled basis' in [Section] 251(c)(3) means 'physically separated.' " Id.

It is clear from the forgoing that the Supreme Court does not read section 251(c)(3) as *prohibiting* the combination of previously uncombined, but ordinarily combined, elements. Accordingly, the Commission should reject Ameritech's argument that Section 251(c)(3) prohibits any state requirement that ILECs combine such elements for CLECs on request.

Equally flawed is Ameritech's argument that the Commission cannot impose requirements that go beyond federal law but instead must mirror federal precedent in determining whether Ameritech is required to combine ordinarily

combined elements . In essence, Ameritech asserts that this Commission has no authority to impose any unbundling requirement that the FCC has declined to impose. This, however, is simply not the case. As the Commission knows, the rule of state Commission under the Telecommunications Act is not nearly as circumscribed as Ameritech would have it believe. For example, under the *UNE Remand Order*, state Commissions are specifically authorized to add elements to the national list of elements required to be unbundled, and to remove elements from the list which they themselves have ordered to be unbundled. *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, FCC No. 98-238 (November 5, 1999) (hereafter "UNE Remand Order"), ¶¶153, 156-157. The Telecommunications Act is not, as Ameritech appears to assert, something that renders state Commissions nothing more the FCC field offices. Rather, state Commissions are clearly permitted to exercise their own judgment with respect to significant issues.

State commissions have exercised this authority with respect to combinations. As the Staff noted in its Initial Brief, Staff IB at 69, the Wisconsin, Indiana and Michigan commissions, presumably having considered all of the arguments Ameritech raises here, nonetheless have required Ameritech to provide CLECs with UNE-P to serve new and additional lines. WorldCom Ex. 1.0 at 6. Indeed, SBC itself recognizes that UNE-P is the most effective way to serve new and additional lines. Its competitive affiliate, SBC Telecom, uses UNE-P to serve new and additional lines in New York, Pennsylvania and Georgia. Staff Ex.

1.0 at 20; 1.1 at 8; WorldCom Ex. 1.0 at 7. Accordingly, the Commission should reject Ameritech's position.

C. Public Policy Favors New Combinations

Ameritech argues that public policy favors its position with respect to new combinations. Ameritech IB at 76-77. This argument is, to put it charitably, novel. However, the Commission need not reach this issue. Ameritech is, as it so frequently does, attempting to relitigate matters that the Commission has already decided.

Relying upon the testimony of its economist, Dr. Aron, Ameritech posits that requiring Ameritech to provide ordinarily combined UNE combinations to CLECs is contrary to general antitrust law, and will hamper the formation of competition. Ameritech IB at 77. Dr. Aron's view, asserts Ameritech, finds general support among scholars. Id.

Ameritech asserts that antitrust principles disfavor requiring a competitor to affirmatively aid another competitor. Ameritech IB at 77. While this may be true, the Staff has made no assay into this area, as it is also entirely irrelevant.

The Telecommunications Act of 1996 is emphatically *not* an antitrust law. In Goldwasser v. Ameritech, the Court of Appeals for the Seventh Circuit observed that:

> Congress could have [in enacting the Telecommunications Act of 1996] chosen a simple antitrust solution to the problem of restricted competition in local telephone markets. It did not. Instead, in an effort to jumpstart the development of competitive local markets, it imposed a host of special duties upon the ILECs…[.] **These are precisely the kind of**

> **affirmative duties to help one's competitors that we have already noted do not exist under the unadorned antitrust laws**.
>
> Goldwasser v. Ameritech, 222 F.3d 390, 400 (7th Cir. 2000) (emphasis added).

In other words, Ameritech's attempt to convince the Commission that antitrust laws play a role in this analysis is a red herring. Antitrust laws do not apply in this instance. Ameritech has an affirmative duty, over and above compliance with antitrust laws, to undertake and acquit the duties that the Telecommunications Act of 1996 imposes upon ILECs.

The Staff takes no position regarding whether Dr. Aron's views regarding the tendency of UNE combinations to frustrate competition are widely held among economists, because it is unnecessary to consider Dr. Aron's views. In this case, the purported scholarly view has been shown by events to be simply wrong. The evidence of the marketplace – what *actually happens* in *the real world* – directly contradicts Dr. Aron's speculation regarding what *should*, *in theory*, occur.

In fact, in those states where local competition has begun to flourish, it has flourished largely as a result of CLECs using UNE-P to serve their customers. *See, e.g.*, AT&T/PACE Ex. 1.0 at 9-10 (*one million* customers in New York served by CLECs using UNE-P; in Texas, CLECs serve 10 times as many customers using UNE-P as by using UNE loop). In other words, Dr Aron's testimony amounts to little more than the assertion that something that has been seen to work in *practice* cannot work in *theory*. The Commission should, therefore, hesitate to accept Dr. Aron's assessment, since it is contrary to the

evidence of actual events. Dr. Aron's testimony gives credence to the joking definition of an economist: a person who observes what happens in practice, and determines whether it could work in theory.

The reasons underlying the success of UNE-P as a force to impel competition also demonstrate the bankruptcy of Ameritech's position. It is clear that requiring CLECs to combine elements themselves requires CLECs to take additional steps and incur costs that are completely unnecessary and inure to no one's benefit save Ameritech. Staff Ex. 1.0 at 22; AT&T/PACE Ex. 1.0 at 35-36; *see also* Tr. at 246-47 (Ameritech witness Scott Alexander concedes that Ameritech would be required to conduct, and would charge a CLEC for, additional work to establish service through elements combined by the CLEC). Further, the extra steps involved introduce new points of failure into the network, thereby increasing the likelihood of failure and decreasing service quality. Staff Ex. 1.0 at 23; AT&T/PACE Ex. No. 1.0 at 35; WorldCom Ex. 1.0 at 9. In other words, Ameritech asserts that public policy favors the imposition of unnecessary costs to provide relatively worse service. As this assertion is nonsensical, the Commission should not accept it.

II. The Commission Should Require Ameritech to Permit CLECs to Use Shared Transport to Provide IntraLATA Toll Service

Ameritech argues that both controlling law and policy considerations prohibit the Commission from requiring Ameritech to permit CLECs to use shared transport for the purpose of providing intraLATA toll service. Ameritech IB at 58 *et seq*. Ameritech contends that the FCC does not require ILECs to permit CLECs to use

shared transport in this manner. Ameritech IB at 59. It further contends that such a use of shared transport must, but does not, satisfy the FCC's "impair" test for unbundling. Ameritech IB at 62. Each of these arguments must fail.

Ameritech's argument is based on a fundamental failure or refusal to understand precisely what CLECs are. It believes that CLECs, like interexchange carriers, should be compelled to pay access charges, and castigates them for attempting to gain an "unearned advantage[3]" in the intraLATA toll market. Ameritech IB at 67-8. This, however, cannot be the case. CLECs are local carriers; they are entitled to be treated like local carriers and should not be required to pay for access that they already, by definition have.

A. State Law Requires Ameritech to Permit CLECs to Use Shared Transport to Provide IntraLATA Toll Service

This issue presents another instance in which legislative events have overtaken Ameritech. Specifically, the Illinois General Assembly addressed the issue of whether Ameritech must permit CLECs to use shared transport to provide IntraLATA toll service. The General Assembly decided Ameritech must do so, and therefore enacted the following provision:

> A telecommunications carrier may use a network elements platform consisting solely of combined network elements of the incumbent local exchange carrier to provide end to end telecommunications service for the provision of existing and new local exchange, interexchange that includes local, local toll, **and intraLATA toll**, and exchange access

[3] A skeptic might argue that Ameritech enjoys an "unearned advantage" to the extent that it has been permitted to build a multi-billion dollar infrastructure, with the expense and risk of this endeavor borne entirely by its customers, while at the same time being completely insulated from competition for three-quarters of a century, and that, therefore, Ameritech should be extremely hesitant to raise the issue of "unearned advantages."

> telecommunications services within the LATA to its end users or payphone service providers **without the requesting telecommunications carrier's provision or use of any other facilities or functionalities.**
>
> 220 ILCS 5/13-801(d)(4) (emphasis added).

What this provision means, of course, is that a CLEC may provision a customer through UNE-P and provide that customer with intraLATA toll service, *without having to purchase anything else from Ameritech*. Such UNE-P provisioning includes, by definition, shared transport. Since Ameritech's argument against permitting CLECs to provision intraLATA toll using shared transport is based entirely upon its contention that CLECs can utilize custom routing – an *additional* service provided by Ameritech at *additional* cost – for the same purpose, Ameritech's argument does not even leave the starting gate. It is repugnant to state law, and the Commission should reject it.

Significantly, Ameritech does not even attempt to respond to the existence of this provision, electing instead to entirely ignore it. Ameritech states incorrectly that "[t]here is no legal requirement that Ameritech Illinois allow end-to-end transmission of toll calls over the shared transport UNE." Ameritech IB at 58-59. This appears consistent with Ameritech's general position that state law requirements are something that need not be considered. The Commission should reject this cavalier attitude and require Ameritech to fulfill its state law obligations.

B. The FCC Permits CLECs to Use Shared Transport to Provide IntraLATA Service

The Staff addresses the remainder of Ameritech's arguments on this issue in the alternative since, in the Staff's view, the Commission need not consider anything beyond Section 13-801(d)(4). However, Ameritech argument that the FCC does not permit this use of shared transport is also defective.

First, the FCC stated, in its *First Report and Order*, that:

> We also reject the arguments that allowing carriers to use unbundled elements to provide originating and terminating toll services is inconsistent with the purpose of the 1996 Act. Congress intended the 1996 Act to promote competition for not only **telephone exchange services and exchange access services, but also for toll services**.
>
> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC No. 96-365 (August 8, 1996) (hereafter "First Report and Order"), ¶ 361 (emphasis added).

The basic thrust of the FCC's policy is therefore clear. CLECs are allowed use UNEs – and all of the features and functionalities inherent in those UNEs – to provide toll service.

Ameritech seeks to avoid the effect of this provision by asserting that, in the *UNE Remand Order*, the FCC ordered unbundling of shared transport for the sole and limited purpose of providing local service. Ameritech IB at 59 *et seq*. It then defines local service – as the FCC *did not do* in the UNE Remand Order – to include local exchange and exchange access service, and, conveniently, to *exclude* intraLATA toll service. Significantly, Ameritech declines to give information upon where it discovered – or, more likely, how it internally evolved – its definition of "local." The one thing Ameritech makes clear is that its definition of "local" does not include intraLATA toll.

This, however, is akin to providing an "apples to apples" comparison after determining that, for purposes of the comparison, only the Fuji and Granny Smith varieties will be defined as "apples." Ameritech gives no provenance for its definition of "local". It certainly can be found nowhere in the UNE Remand Order. Moreover, the FCC has indicated that, contrary to Ameritech's assessment of what that agency clearly intended, stated that it takes the view that CLECs should be able to use shared transport to provide toll service. Accordingly, Ameritech's argument is without merit, and the Commission should reject it.

C. The Commission Need Not Conduct an "Impair" Analysis

Ameritech attempts to convince the Commission that the use of shared transport to provide toll service does not satisfy the "impair" test established in the *UNE Remand Order*. Ameritech IB at 62 *et seq*. The Commission should not concern itself with this argument.

As the Staff made clear in its Initial Brief, Staff IB at 60 *et seq*., no unbundling analysis is necessary because the ability to use shared transport to provide toll service *is not a network element*. Rather, it is a feature or functionality of an element that this Commission and the FCC have long since ordered unbundled. Staff IB at 60. Since CLECs purchasing UNEs are entitled to the full features and functionalities of those UNEs, Ameritech's proposal that the CLECs in question ought to purchase yet another service to make full use of UNEs is unacceptable. In this situation, Ameritech is like an unprincipled car salesman

who, once a customer agrees to a purchase price, attempts to charge extra for the brakes, tires, and engine.

To the extent that the Commission chooses to conduct an impair analysis, the Staff has shown why the inability to use shared transport to provision toll service would constitute a material impairment, within the meaning of the *UNE Remand Order*, of a CLEC's ability to provide service. Staff IB at 62-63. To the extent that the Commission reaches this issue, it should so find.

III. The Commission Should Accept Staff's Recommendations Regarding Shared and Common Costs

The Commission should accept Staff's proposal regarding Shared and Common Costs. In its Initial Brief, Ameritech argues that this proceeding is not an appropriate forum to investigate its Shared and Common Costs. Ameritech IB at 55-6. Ameritech's argument is without merit. In fact, this issue has been addressed in its entirety in Staff's Initial Brief. Staff IB at 26-29. Moreover, Staff notes that no implied support for Ameritech's position is indicated by the choice of issues addressed in CLEC testimony. Id. Not only is a tariff proceeding an appropriate place to address all of the tariff's underlying cost studies; a tariff modification is the only way to give impact to cost reductions experienced by Ameritech. Accordingly, Staff's proposal should be accepted.

Ameritech argues that the joint and common costs factor determined in the initial TELRIC case, ICC Docket 96-0486, should continue to be used in the post merger environment of 2001. Ameritech IB at 55-6. As demonstrated in Staff's Initial Brief, Staff does not believe that Ameritech has calculated its

Shared and Common Costs Factor in compliance with ICC Docket 96-0486. Staff IB at 19-22. Even if the Shared and Common Costs Factor were calculated in compliance with ICC Docket 96-0486, it should not be adopted for use in this case. In fact, Ameritech's own witness testified in the Alt. Reg. Review docket that the telephone industry has achieved a productivity factor of 3.3% per year. ICC Docket 98-0252, Ameritech Ex. 2.1 at 11. Therefore, the mere passage of time results in an overstatement of shared and common costs when the 1996 factor is used. In addition, it is undisputed that merger related cost savings have occurred as a result of the merger of SBC and Ameritech. No productivity gains or merger related savings are included in the Shared and Common Costs Factor proposed by Ameritech for use in this case.

Ameritech attempts to mislead the Commission by inferring that the same Shared and Common Costs Factor it proposes for use in this case was adopted in the Hearing Examiner's Proposed Order (HEPO) in ICC Docket 98-0396. Ameritech IB at 56. Ameritech is fully aware that this is not the case and that its own witness Ruth Ann Cartee revised her calculation of the shared and common costs to include the "extended TELRIC" methodology required by the TELRIC Order. HEPO at 47, ICC Docket 98-0396. Although Ameritech may have initially proposed use of the same factor as it proposed in this case, that position is not reflected in the HEPO. Furthermore, the calculation utilized in ICC Docket 98-0396 was based on pre-merger data and should not be used in this proceeding.

In general, Staff agrees with Ameritech that changes in Ameritech's costs should be reflected in all cost based tariffs. Staff does not object to a separate

docket to examine current, forward-looking Ameritech cost studies. Staff IB at 28-9. However, Staff urges the Commission to begin applying Ameritech's merger related savings by adopting Staff's position in this docket. Staff notes that Ameritech may file tariff reductions to reflect cost savings at any time regardless of whether they are specifically ordered to file such tariffs. Because Ameritech has not filed any tariffs reflecting either productivity gains or merger related savings, the Commission should accept Ameritech's invitation to initiate a new proceeding to examine its cost studies.

> Staff recommended in its testimony that the Commission order Ameritech to perform a current study of shared and common costs that is in full compliance with the Commission's prior orders in ICC Dockets 96-0486, 97-0601/0602, and 98-0555. Staff Ex. 6.0 at 15-16. In order to comply with these orders, the study must distinguish between shared costs and common costs and must utilize the extended TELRIC methodology. The study should also address each of the Staff concerns listed in Staff's Initial Brief. This study should be forward looking and based on preliminary estimated budget data. Id.

The amounts of merger costs and savings utilized in each of the cost studies should reflect current estimates of net merger related savings. Merger related costs and savings should be reflected in that study at a forward looking, going level with no calculation of Net Present Value ("NPV"). No NPV calculations for years prior to 2002 should be utilized in any of the cost studies being reviewed in this docket. Staff Ex. 2.0 at 10.

Ameritech argues that the record in this docket is insufficient for the Commission to re-visit Ameritech's shared and common costs. Ameritech IB at 56. Ameritech has the burden of proof to provide support for all of its costs in this docket and has provided no support for its current level of shared and common

costs, while it introduces new models, including ARPSM and NUCAT, as support for other types of costs. As a result, Ameritech has failed to respond to Staff's direct and rebuttal testimony on the issue of shared and common costs and has refused to provide its most current shared and common costs study in response to Staff's data request. Staff IB at 23-26 and 33-4. Clearly, the Commission should give no weight to Ameritech's argument that the record is insufficient on the issue of shared and common costs under these circumstances.

Ameritech contends that Staff's starting point is a preliminary draft of its shared and common costs study. Ameritech IB at 56-7. Ameritech's contention is untimely in the sense that it is raised, for the first time, in Ameritech's Initial Brief. The study utilized by Staff was identified in Staff's direct case by both the title and the factor it produced. Moreover, the model used by Staff remains today the only computer model ever provided to any Commission Staff member. The time for Ameritech to address Staff's starting point was in its rebuttal and surrebuttal testimony. As noted in Staff's Initial Brief, both the 1998 Shared and Common Costs Study (ICC Ex. 2P) that Ameritech now refers to as the "preliminary draft" (but which is not marked as a draft copy) and the 2001 Shared and Common Costs Study (ICC Ex. 1P) that Ameritech now refers to as the "finalized study" are in the record of this case. Both versions of the study share an identical starting point, the 1998 ARMIS data reported by Ameritech. Therefore, Ameritech's argument regarding Staff's starting point is both untimely and irrelevant and should be given no weight by the Commission.

Further, Staff has compared ICC Exhibits 1P and 2P and found that the sole difference between the studies is the recognition of a small amount of merger related savings in the 2001 study which was offset by an adjustment increasing inflation. Staff IB at 33-4. This difference is described in Staff's Initial Brief and has absolutely no impact on Staff's proposed Shared and Common Costs Factor. The offsetting inflation adjustment is an inappropriate distortion of the study that should not be allowed by the Commission.

In this proceeding, Staff testified that the use of historical data with numerous adjustments is prone to manipulation and should be considered less reliable than truly forward looking data; that the sources of data and calculations used in Schedule 7 "Cost Savings and Inflation" are unclear; that appropriate references and supporting work papers should be provided; and that use of inflation factors is not necessary if forward looking costs are used. ICC Staff Ex. 2.0 at 7-8. Ameritech did not provide any references or supporting work papers related to Schedule 7 "Cost Savings and Inflation" in response to Staff's testimony. Moreover, the increased inflation used to offset merger related costs and savings has not been supported by Ameritech and should be disregarded. As Staff witness Marshall testified under cross examination, "elimination of the increased inflation results in an identical factor to that shown on Staff Ex. 6.0, Schedule 6.1, page 1 of 3." Tr. at 395.

Ameritech argues that Staff erred by plugging savings into the draft on an undiscounted basis. Ameritech IB at 57. Staff believes that a forward- looking, going level of merger related savings is appropriate for use in this case. Staff's

position regarding Ameritech's inappropriate use of NPV calculations in what is required to be a forward looking study was presented in Staff's direct testimony. Staff Ex. 2.0 at 8-10. The only evidence in this record on the issue of discounting or NPV calculations is Staff's testimony that demonstrates that no NPV calculations should be used in forward looking cost studies. Clearly, Ameritech had ample opportunity to address this issue in its own testimony and failed to do so. Staff's use of undiscounted data was intentional, is supported by Staff testimony, and was not refuted by any party. This represents no error on the part of Staff.

Additionally, Ameritech alleges that Staff committed a second error by utilizing the most current estimate available of net merger related savings. Ameritech IB at 57. This estimate was obtained by summing the savings commitments of SBC's merger integration teams. It was provided by SBC personnel and is contained in the final report of the independent third party auditor, Barrington Wellesley Group (BWG). Tr. at 375-6. Staff notes that SBC has filed its direct testimony in the Commission's on-going investigation of merger related savings, ICC Docket 01-0128, and has not refuted this estimate. In any event, Staff's use of the most current estimate of net merger savings available was intentional, is supported by Staff testimony, and was not refuted by Ameritech testimony. Likewise, this is no error on the part of Staff.

Finally, Ameritech alleges that Staff's calculation is flawed in that it recognizes net merger expense savings but does not recognize the reduced investment costs associated with net merger capital savings. Ameritech IB at 57.

Ameritech's allegation is incorrect. Indeed, Staff's calculations include the same level of merger related capital savings as Ameritech's model. It is important to note that the essence of Ameritech's argument would require a reduction in the TELRICs of all Ameritech UNEs as a preliminary step to reduce the denominator used in the shared and common costs calculation. The majority of the projected capital savings is in the area of procurement and should be reflected in other studies such as ARPSM. While Staff conceded that this small but complex calculation revising the annual charge factor to reflect an increased level of merger related capital savings was not made, the impact of such a calculation on shared and common costs would not be significant. There is no impact at all on Staff Exhibit 6.0, Schedule 1, page 1, because this calculation recognizes the correct amount of net merger capital savings based upon Ameritech's assumptions.

Moreover, Staff's calculation does not "shrink the numerator while leaving the denominator constant" as Ameritech alleges. Ameritech IB at 57. Reductions in Ameritech costs were appropriately removed from both the numerator and the denominator in Staff's calculation. Tr. at 391, lines 19-21. This is readily apparent from a comparison of Staff Exhibit 6.0, Schedule 1, pages 1, 2, and 3 (Proprietary). In that document, the denominators used are shown at lines 13 through 17 of each page. Comparatively, lines 15, 16 and 17 shows that the denominator has not been held constant and, in fact, has been reduced for each reduction reflected in the numerator development. In other words, the denominators shown on page 2 are less than those shown on page 1

while the denominators shown on page 3 are less than those shown on page 2. Clearly, the denominators were not held constant. Accordingly, Staff's calculation is not flawed; it was clearly mischaracterized by Ameritech.

For all of the reasons discussed in Staff's Initial Brief and above, the Commission should adopt the Shared and Common Cost Factor proposed by Staff.

IV. The Commission Should Accept Staff's Total Element Long-Run Incremental Cost ("TELRIC") Analysis

A. Ameritech's Criticisms Are Baseless

Although Ameritech provided abundant criticisms on the Joint CLECs' approach for the calculation of per-line TELRIC, Ameritech has presented scant criticism of Staff's approach. Ameritech IB at 30-45. Consequently, one can reason that even Ameritech cannot justify the use of ARPSM or ARPSM outputs in the TELRIC analysis.

In its initial brief, Ameritech characterizes its dispute with Staff on the calculation of per-line TELRIC as a "disagreement on the weighting factors for replacement and growth lines". Ameritech IB at 2, 40-41. Ameritech states that Staff's weighting factors are inappropriate because they include more replacement lines than Ameritech's weighting factors. Id. This is an overly simplistic and incorrect characterization of the differences between Staff and Ameritech on the calculation of per-line TELRIC. As demonstrated in Staff's initial brief, there is no direct comparison between Ameritech's and Staff's approaches for the calculation of per-line TELRIC. Staff IB at 36, 41. Nor is

there any direct comparison between Ameritech's weighting factors and those of Staff: Staff's weighing factors are used in the calculation of per-line TELRIC; in contrast, Ameritech's weighting factors are used in the calculation of the *Single Price Equivalent* (SPE) of Ameritech's marginal purchase. Staff IB at 41. Consequently, the real disagreements between Staff and Ameritech do not lie with the weighting factors or line counts in ARPSM. Rather, the dispute arises as to whether ARPSM or ARPSM outputs should be used at all in the TELRIC analysis and whether the SPE should be used in place of a single (market) price which Ameritech is expected to pay. Staff IB at 41-43.

In conducting its TELRIC analysis Ameritech uses the SPE as if it were the single price that Ameritech is expected to pay. Ameritech Ex. 2.1 at 20, Ameritech IB at 42-43. The underlying assumption is that the vendors would adjust their prices, in response to changes in the line-mix of Ameritech's purchase, in such a way as to maintain the SPE at a certain level. Ameritech Ex. 4.1 at 22. This assumption is not supported by economic theory, terms of the switch vendor contracts, or any empirical evidence. Staff IB at 41-43.

Ameritech's approach is theoretically and conceptually flawed, and as a result its application would have serious, undesirable consequences. Specifically, Ameritech's approach overstates the per-line TELRIC and thus, overstates the resulting UNE rates in this proceeding. Staff IB at 42-43.

Ameritech agues that all parties should follow FCC regulations in conducting a TELRIC analysis:

> FCC Rule 505(b) provides in relevant part that the TELRIC is the (1) forward-looking cost (2) over the total quantity of the facilities and functions. Ameritech IB at 42.

Staff is in total agreement. In fact, Staff uses the forward-looking costs (vendor prices) and the entire set of network facilities in its TELRIC analysis. Consequently, Staff has followed FCC rules in its TELRIC analysis.

Ameritech arguments used to justify its use of the SPE (*i.e.,* the outputs of ARPSM) as the (would-be) single market price that Ameritech is expected to face are inconsistent. These inconsistencies are clearly demonstrated in Ameritech's pre-filed testimonies and initial brief. In its pre-filed testimonies, Ameritech states,

> This [single price equivalent] is the price that the vendors would offer if they were *constrained* to offer a single price for both replacement and growth lines. AI Ex. 4.1, Schedule 3 at 18. (Illustration and emphasis added)

Explicitly, the SPE is equal to the constrained oligopolistic price. Yet, Ameritech presents a much different picture of the SPE in its initial brief:

> This single price [SPE] is the price that a hypothetical vendor would charge for all lines of switching, *in absence of competitive forces* and the resulting two-tiered structure. Ameritech Initial Brief at 35. (emphasis added)

Now, Ameritech argues that the SPE equals the would-be monopoly price — the price that would prevail *in absence of competitive forces*.[4] It appears that Ameritech itself is unsure how it should justify its use of the SPE in place of the single market price that Ameritech is expected to pay.

Moreover, none of Ameritech's justifications or arguments are valid. The SPE is not, and cannot be used in place of, the single would-be price, which would prevail if vendors were constrained to a one-tiered pricing structure. Staff IB at 41-43. Staff maintains that this argument remains valid regardless of whether Ameritech equates the SPE with the constrained oligopolistic price or with the monopolistic price. A single market price does not exist under two-tiered pricing as Staff illustrated with Ameritech's pizza parlor example. Staff IB at 41-42.

B. The Joint CLECs' Criticisms Are Misplaced

The Joint CLECs offer no challenge or criticism of Staff's proposed calculation of per-line TELRIC. Staff disagrees with the Joint CLECs on two fronts. First, Staff disagrees with the Joint CLECs on their arguments against Ameritech's ARPSM and on their attempt to turn Ameritech's ARPSM into a TELRIC model. Secondly, Staff believes that the Joint CLECs incorrectly identify the real issues in this docket.

The Joint CLECs' first criticism of ARPSM is that it is not a TELRIC study and that it does not develop switching costs. Joint CLECs' IB at 19-22. However, it is clear, from the definition of ARPSM as well as from Ameritech's testimonies, that ARPSM is not intended to be a TELRIC study, nor is it intended to develop switching investment costs. Furthermore, ARPSM is not being used

[4] Even if a hypothetical vendor charged a single price in absence of competitive forces, the single price charged by this hypothetical vendor can not possibly be equal to the single price equivalent calculated by ARPSM.

as a TELRIC study or to develop switching investment costs.[5] *See* Ameritech Ex 2.1, AI Ex. 2.2.

The Joint CLECs' second and third criticisms of ARPSM are that it has failed to properly reflect vendor contract prices and that it has excluded millions of lines. Joint CLECs' IB at 15-22. Staff finds the Joint CLECs' arguments to be off base. The Joint CLECs are trying to make the ARPSM model perform calculations that it was not constructed to calculate. ARPSM is constructed to calculate the *single price equivalent* (SPE) for Ameritech's marginal purchase (purchase under Ameritech switch contracts). To accomplish such a purpose, ARPSM should and does use: (a) the contract prices and (b) the line counts purchased under Ameritech's switch contracts. Thus, the Joint CLECs' criticisms of line-counts and input prices used by Ameritech in ARPSM are misplaced. The Joint CLECs' erroneous criticisms seem to stem from confusing ARPSM with the subsequent TELRIC analysis, as well as, the *single price equivalent* with the per-line TELRIC.

The Joint CLECs' fourth criticism of ARPSM is that the fill factor is too low. Joint CLECs' IB at 25-26. The fill factor in ARPSM is to convert the DS1 line prices to the DS0 line prices, and contrary to the Joint CLECs claim, it is not intended to accommodate future growth. Staff Ex. 7.0 at 53. Staff has concluded that the fill factor used by Ameritech is proper. Id.

In its attempt to turn ARPSM into a TELRIC model, the Joint CLECs have modified Ameritech's ARPSM by altering the input prices for ARPSM. The outputs of Ameritech's ARPSM are the *single price equivalents* of Ameritech's

[5] Though the ARPSM outputs are used as inputs in the subsequent TELRIC analysis.

marginal purchase, but the outputs of the Joint CLECs' modified ARPSM do not have a clear interpretation.[6] It is conceptually and theoretically wrong to attempt to turn Ameritech's ARPSM, which is constructed to calculate the *single price equivalents*, into a TELRIC model. This mistaken calculation of per-line TELRIC would have serious, undesirable implications on the resulting UNE rates. The Joint CLECs' approach for the calculation of per-line TELRIC would undoubtedly undercount the growth lines in the network structure and thus, lead to understated per-line TELRIC. Staff Ex. 7.0 at 49. Consequently, the UNE rates would also be understated.

Finally and most importantly, Staff disagrees with the Joint CLECs on what comprises the real issues concerning ARPSM. While the Joint CLECs take issue with Ameritech on the weighting factors in ARPSM, Staff has no disagreement with Ameritech on ARPSM *per se*. In contrast with the Joint CLECs, Staff does not believe that the real issues lie with the prices or line counts used in ARPSM. Rather, Staff believes that the real issues are whether ARPSM or ARPSM outputs should be used in the TELRIC analysis, and whether the single price equivalent should be used in place of the (would-be) single market price. Staff Ex. 7.0 at 48-49.

C. Staff's Conclusions Should Be Adopted

Staff's position that ARPSM or ARPSM outputs should not be used in the TELRIC analysis is fully supported in Staff's Initial Brief. *See* Staff IB at 34-47.

[6] In using ARPSM and its own input prices, the Joint CLECs virtually uses two sets of weighting factors in deriving the outputs of its modified ARPSM: (1) Ameritech's weighting factors, and (2)

As shown above and in Staff's initial brief, Ameritech has offered no valid criticism of Staff's approach on the calculation of per-line TELRIC. *See* Ameritech IB at 30-45. Likewise, the Joint CLECs have provided no criticism or challenge of Staff's approach. *See* Joint CLECs IB at 13-25. The Commission should reject the use of ARPSM and ARPSM outputs in the TELRIC analysis, and accordingly reject the per-line TELRIC and UNE rates as developed by Ameritech and the Joint CLECs, respectively. The Commission should adopt Staff's calculation of per-line TELRIC and the UNE rates for purpose of this proceeding. Staff IB at 47-48.

V. The Commission Should Adopt the Staff's Proposed CCS and UNE Rate Structures

A. The Commission Should Reject Ameritech's Criticisms of Staff's Rate Structures

Staff disagrees with many of Ameritech's assertions used to support its-usage-based UNE rate for Centum Call Seconds (CCS)[7] investment. Staff's responses are summarized as follows.

(1) Usage-based (related) vs usage-sensitive costs

Ameritech uses "usage-related costs" and "usage sensitive costs" interchangeably in describing CCS investment costs. Ameritech asserts that it incurs usage-based switch costs, and thus should be allowed to recover its CCS

---

the Joint CLECsI developed weighting factors. This is clearly illustrated in Staff Ex. 7.0, Attachment 2, Chart 8 and Chart 10.

[7] CCS capacity refers to the network's capability to channel calls from the calling party to the called party.

investment cost via a usage-sensitive UNE rate. Ameritech IB at 14-29. For example,

> Ameritech Illinois incurs-based switch costs, and without a usage-sensitive rate component, it will bear a disproportionate share of those costs. Ameritech IB at 19.

Staff argues that these two cost concepts are not interchangeable, and that CCS investment is not usage sensitive. As noted in Staff's Initial Brief, CCS investment is based on projected aggregate peak time usage. Staff IB at 45. In this sense and in this sense only, CCS investment is usage-based or usage-related. However, CCS investment is not affected by the actual usage of it; thus it is not usage-sensitive. Accordingly, Ameritech's assertion that CCS investment is usage-sensitive is incorrect, and it is not a valid support for its usage-based UNE rate for CCS investment.[8]

(2) Federal regulations on UNE rates for shared facilities

Ameritech asserts that the FCC has expressly recognized that "ILECs incurs usage sensitive switching costs." Ameritech IB at 20-21. Ameritech cites passages of FCC regulations as support for its usage-based UNE rate for CCS investment, and concludes that "it is plainly a matter of federal telecommunication policy that ILECs like Ameritech Illinois be allowed to recover those usage costs by means of usage-sensitive rates." Ameritech IB at 20-21.

[8] It is indisputable that the investment cost of CCS capacity is *unaffected* by the actual usage of this investment. However, the actual usage of this investment may be used as input in projecting future peak time usage. In this sense, this actual usage may influence the *future* possible CCS investment. Ameritech seems to be doing *mismatch* both in its discussion on usage vs cost (e.g.,

A careful reading of the Federal regulations cited by Ameritech refutes Ameritech's assertions.

First, FCC regulations merely list both usage-based and non-usage-based UNE rates as potential approaches to recover the investment costs of shared facilities.[9] *See*, First Report and Order, ¶ 810; CC Docket No. 96-98, ¶ 2; 47 CFR 51.509(b). FCC regulations do not prescribe a method of cost recovery of shared facilities. Rather, FCC regulations simply do not preclude usage-based UNE rates as a potentially appropriate approach to recover investment costs of shared facilities.

Secondly, nowhere in paragraph 810 of the First Report and Order or in section 51 of 47 Code of Federal Regulation does the FCC state that the investment cost of a *shared facility* (switching matrix, in particular) is usage-sensitive and thus a usage-based (as opposed to a non-usage-based) UNE rate should be adopted. While listing both usage-based and non-usage-based UNE rates as potential approaches to recover investment costs of *shared facilities*, the federal regulations leave it to state commissions to decide which of the two approaches is most appropriate.[10] 47 CFR 51.507(c).

(3) Usage pattern of an average port vs usage of an individual port

---

Ameritech Initial Brief at 24) and in its conclusion that *CCS investment* is affected by *usage or is usage-sensitive*.

[9] CCS capacity of a switch is a "shared facility" and it provides switching capability to all users (Ameritech's or ULS subscribers' customers) connected to the switch.

[10] Allowing usage-based UNE rates for the recovery of investment costs is, *in no way*, an acknowledgement that investment costs are usage-sensitive.

As noted in Staff's Initial Brief, Ameritech apparently confuses "usage of an individual port" with "usage pattern of a port-group". As a result, it misinterpreted Staff's statements on "usage pattern", and inappropriately used Staff's statement as support for Ameritech's usage-based UNE rate for the recovery of its CCS investments. Staff IB at 52. Ameritech states,

> Staff has taken the position that "[I]t is only natural and in accordance with cost causation principles to allocate the costs [of CCS capacity] based on *each user*'s "fair share". Ameritech IB at 15. (Emphasis added)
>
> I do not think it should be necessary or required to statistically demonstrate that usage across ports is not identical. Simple observation and common sense should provide all the evidence needed to conclude that some ports are used more than others, and usage across all ports are not statistically identical. Ameritech Ex. 2.2 at 39.
>
> Since the users of the switch *do not use it equally*, and therefore, do not contribute equally to the CCS investment costs of the switch. Ameritech IB at 15.
>
> Under the CLEC's proposal [non-usage-based UNE rate], all customers will pay the same, regardless of how much or how little they use the switch. This means that if the CLEC's proposal is adopted, *low-usage* customers will be subsidizing the switch usage of *high-usage* customers." Ameritech IB at 15. (Illustration and emphasis added)

First, although Staff made the statement cited above in rebuttal testimony, *See* Staff Ex. 7.0 at 35, the term "user" as referred to by Staff means the carrier (or port-group) that is connected to the switch (either as UNE subscriber or provider), not the individual port-user or end-user. This distinction should to be self-evident as the wholesale (i.e., UNE) rates and cost allocation issues in this docket concern allocating investment costs among carriers, not among individual

ports or end-users. Consequently, retail rates or a cross-subsidy across individual ports has no *direct* relevance in this proceeding.[11]

Second, the fact that "the users of a switch do not use it equally" does not necessarily mean that the *usage pattern* of an average port would vary across port-groups. Staff IB at 52. Ameritech cannot use *the plain fact* that "the users of a switch do not use it equally" as evidence that the *usage patte*rn of an average port differs across *port-groups* (or as a valid argument for its usage-based UNE rate for CCS investment).

Third, as noted in Staff's initial brief, a difference in per-port *usage* (e.g., monthly MOU) between port-groups is not evidence that the *usage pattern* of an average port differs across port-groups. Staff IB at 51. "Usage pattern" refers to the number of calls channeled from the calling party to the called party over time. Usage, in contrast, is expressed in Minutes of Usage (MOU) — *e.g.*, monthly MOU. Ameritech not only confuses an "individual port" with a "port-group", but it also confuses "usage" with "usage pattern".

(4) Contracts do not contain provisions dealing with usage-sensitive charges and CCS costs are not usage-sensitive

In support of its assertion that CCS investment is usage sensitive, Ameritech states that the switch contracts contain "provisions dealing with usage-sensitive charges" and that extra CCS capacity (CCS jobs) may be needed. Ameritech IB at 23-29. While the switch contracts have provisions for extra CCS

[11] Whether an end-user is cross-subsidizing other end-users of the same carrier depends on the retail rate structure set by the carrier. An end-user of one carrier can not be *directly* subsidized

capacity, the charge for the extra CCS is not usage-sensitive. Moreover, whether there would be any need to expand CCS capacity beyond the levels specified in ARPSM Documentation has no relevance to the usage-sensitivity of the CCS investment or to the UNE rate structure for CCS.[12] [13]

(5) "Evidence" Presented in Ameritech's Initial Brief

Staff does not object to recovering CCS investment costs via a usage-based UNE rate *per se*. As discussed in Staff's Initial Brief, the UNE rate structure for CCS should reflect actual cost circumstances. Staff IB at 45-53. When the per-port CCS contribution significantly differs across *port-groups* (ULS provider and subscribers), a usage-based UNE rate may be preferable; otherwise, a non-usage-based UNE rate is superior. *Whether the per-port contribution differs across port-groups can only be illustrated by the usage patterns of the switch and the usage patterns of different port-groups.* Ameritech has not yet provided any information to support its position. On the contrary, Ameritech seems to argue that it does not need to provide any proof. Ameritech Ex. 2.2 at 39. Ameritech tries to provide for the first time in its initial brief some

---

by an end-user of another carrier as users of one carrier are not *directly* linked to users of another carrier, though a carrier may be *directly* subsidizing another carrier through UNE rates.

[12] As noted in Staff rebuttal testimony, it is even unclear, from information provided by Ameritech in this proceeding, as to whether there would be any need at all to expand CCS capacity beyond the levels specified in the ARPSM Documentation during the lifetime of these switch contracts. Staff Ex. 7.0 at 41.

[13] Every manufacturer faces the possibility to expand its production capability (e.g., due to an expected increase in demand). However, this does not make the production plant usage-sensitive.

evidence to support its position;[14] nevertheless, the evidence is either irrelevant or incorrect.

There are three serious problems with the "evidence" provided by Ameritech in its initial brief. First, it is either nationwide average or state average data. Nationwide average or statewide average data is irrelevant. The only information that is relevant is the actual data on the total usage pattern of Ameritech's switch and the usage patterns of different port groups (ULS provider or subscribers), which Ameritech has not presented.

Secondly, the "usage" in the above citations is not the "usage pattern" referred to and requested in Staff Ex. 7.0. Staff Ex. 7.0 at 27-30. "Usage pattern" refers to the number of calls channeled from the calling party to the called party over time and characterized by the number of calls in function of time. In contrast, "usage" referred to by Ameritech in its "evidence" is Minutes of Usage (MOU) — *e.g.*, monthly MOU. As noted by Staff, a difference in the per-port *monthly usage* between port-groups is not sufficient evidence that the per-port *usage pattern* differs across *port-groups*. Staff IB at 51. Neither is it sufficient evidence that a cross-subsidy across *port-groups* would occur under a non-usage-base UNE rate. Therefore, Ameritech's "evidence" on usage (i.e.,

---

[14] As the FCC recently recognized in its May 2001 Local Telephone Competition Status Report, 60% of CLEC customers nationwide are medium and large business, institutional, and government customers. Ameritech Initial Brief at 22.

That number is even higher in Illinois: here, 62% of CLEC customers are medium and large businesses and other institutional customers. Ameritech Initial Brief at 22.

The subsidy problem is also evidenced by Ms Buckley's break-even analysis of Ameritech's Alternative 1 and Alternative 2. Proprietary Staff Ex. 8.0 (Buckley) at 6. The break-even point is the point at which it makes no difference to a customer which alternative is used — it is *the*

MOU) cannot be used as support for its assertion that a cross-subsidy would occur if a non-usage-based UNE rate were adopted.

Third, Ameritech has misquoted Staff in its initial brief. Ameritech states,

> Staff further recognizes that the peak time usage of a business customer is greater than (*i.e.*, not statistically identical to) the peak time usage of a "typical residential customer." Ameritech IB at 27.

Contrary to Ameritech's assertion, Staff did not under cross-examination state a position as to whether the peak time usage of a business customer is higher than that of a typical residential customer. Indeed, Staff cannot make a statement on this subject, as Staff has not seen any actual information/data reported on peak time usage in general or peak time usage for Ameritech's switches in particular.

In summary, while Staff does not preclude the possibility that the per-port usage pattern (and CCS contribution) could differ across port-groups, and thus a non-usage-based UNE rate for CCS might entail a cross-subsidy across port-groups, Ameritech has not provided sufficient information required to support its usage-based UNE rate for CCS. Thus, the Commission must reject Ameritech's proposed usage-based UNE rate structure for CCS.

B. The Commission Should Adopt Staff's Conclusion Regarding CCS and UNE Rate Structures

Staff maintains that, while a usage-based UNE rate is among the possible approaches to recover CCS investment costs, there is no sufficient evidence to

---

number of MOU per month that will yield *the same cost to an end user* under either alternative.

set the correct UNE rate structure for CCS. Ameritech had the burden to prove that a usage-based UNE rate is more appropriate than a non-usage-based UNE rate. Ameritech has not presented any actual data/information on usage pattern of its switch and the usage patterns of different port-groups over time. Furthermore, rather than present such information, Ameritech either states that it need not to do so, *see* Ameritech Ex. 2.2 at 39, or cites sources of information that have no direct relevance to the issue at hand. Therefore, Ameritech has been unable or unwilling to prove that a non-usage-based UNE rate would entail a cross-subsidy across port groups. Accordingly, the Commission should adopt a non-usage-based UNE rate for CCS investment.

Staff further maintains that the per-line TELRIC as developed by Ameritech and by the Joint CLECs is inappropriate. *See* Staff IB at 40-45 and section on TELRIC in Staff's Reply Brief. The non-usage-based UNE rate for CCS should be based on the per-line TELRIC for CCS developed by Staff.

For all of reasons discussed in Staff's Initial Brief and above, the Commission should adopt the UNE rates developed by Staff and presented on page 47-48 of Staff's Initial Brief.

VI. Miscellaneous Issues

A. The Commission Should Require Ameritech to Provide Transiting

---

Ameritech IB at 27.

Ameritech asserts that it is not required to provide transiting. Ameritech IB at 80. In its Initial Brief, the Staff has shown that Ameritech's contention in this regard is simply incorrect. Staff IB at 69-70. However, the Staff is compelled to respond to one point raised by Ameritech in its Initial Brief.

Specifically, Ameritech contends that the Ameritech/MCI Arbitration decision does not support a transiting requirement. Ameritech IB at 81. The Staff is not certain how or why this is relevant; what is relevant is, as Staff noted in its Initial Brief[15], the *TELRIC Order* incorporates the transiting requirements of the *Ameritech/MCI Arbitration* decision. TELRIC Order at 106-7; *see also* Staff IB at 70.

B. The Commission Should Adopt Staff's Proposed OS/DA Custom Routing Prices

In its Initial Brief, Ameritech objects to Staff's recommendation that the Commission accept Staff's revised NRC rate of $64.97 for the OS/DA UNE. Ameritech IB at 52. Staff addressed this issue in its Initial Brief and Staff's position is unchanged. Specifically, Staff remains certain in its position that Ameritech's nonrecurring cost study is extremely subjective and believes the Commission should apply Staff's adjustments restated below.

With respect to OS/DA routing non-recurring charges Staff makes the following three recommendations: First, Ameritech should not include the disconnection fee in the non-recurring charge. Ameritech contends that its

[15] In its reference to the appropriate passage of the TELRIC Order in its Initial Brief, Staff incorrectly ascribed the *TELRIC Order* to the year 1996, instead of 1998. *See* Staff IB at 69-70. The Staff regrets this error.

inclusion of the disconnect charge in the up-front non-recurring charge is entirely appropriate because it is reasonable to assume a customer will cancel a service at some point in the future. Ameritech IB at 55. Ameritech further argues that if one waits to collect the fee until disconnection occurs, there is a significant risk that Ameritech simply won't get paid. Id. Ameritech's arguments are without merit. Although it may be reasonable to assume a customer will cancel service, it is clearly a future event with an unknown date of occurrence that should not be applied at the time the service is connected. Indeed, it is more reasonable to include in the contract a disconnection charge due at the time of disconnection and Staff remains certain with their opinion.

Second, because the data provided by the Company is not based on verifiable and sustainable data, Staff recommends that development cost for service logic be adjusted downward to $90,000. This is based on estimator profile information of Carol Gruchala, the AIN Associate Director, who observed that she had completed a certain program in the AIN project, under budget, saving Ameritech $87,000. Staff Ex. 8.0, Attachment 2. In addition, it is not unusual for cost estimates to be off by as much as 10% in projects. Tr. at 215.

Third, Staff recommends that the adjusted development cost, as quantified below, be allocated among all existing switches in all 5 states. Accordingly, the resulting OS/DA (TELRIC) Nonrecurring charge, at a minimum, should be $55.89. Staff Ex. 8.0, at 12. This cost consists of $47.60 for Connection Labor cost and $8.29 for the AIN service logic development cost. ($90,000 x 80%/8,682 = $8.29, Demand units: 3 CLECs x 1,447 switches x 2 = 8, 682). Last, the

TELRIC cost is increased by 24.29% (shared and common costs) to result in a $69.47 NRC for OS/DA service. Although Ameritech argues that Staff's position with respect to this particular issue is unlawful, Ameritech points to absolutely no authority to support such a statement. Staff therefore recommends that the Commission accept its revised NRC rate of $64.97 for the OS/DA UNE.

C. If the Commission Elects to Adopt the Joint CLECs' ULS Minute of Use Charge, It Should Be Revised Downward

In their Initial Brief, the Joint CLECs discuss the issue of adjustments to the ULS per minute of use charge and the Daily Usage fee. Joint CLECs' IB at 29-35. Although the Joint CLECs have made some valid points, Staff did not address these issues during this proceeding. That being said, if the Commission is to adopt the Joint CLECs' position with respect to these issues, Staff recommends the ULS per minute of use charge to be revised downward.

VII. The Commission Should Implement the Staff's Proposed Tariffs

As the Staff noted in its Initial Brief in this proceeding, the Commission is authorized to impose tariffs that comply with its Orders. Staff IB at 73-76. The Staff has prepared tariffs or revised existing tariffs, which are consistent with the arguments and recommendations that it has advanced in this proceeding. These proposed tariffs are attached to this Reply Brief as Schedules 1, 2, and 3, and are incorporated by reference herein. The Staff recommends that the Commission adopt the proposed tariffs.

VIII. Conclusion

WHEREFORE, for all of the foregoing reasons, the Staff requests that the Administrative Law Judge adopt Staff's recommendations in their entirety as set forth herein.

Respectfully Submitted:
Staff of the Illinois Commerce Commission

BY: _____
One of Its Attorneys

MATTHEW L. HARVEY
DAVID A. NIXON
MARGARET T. KELLY
MARY J.STEPHENSON
Illinois Commerce Commission
Office of General Counsel
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601

T: (312) 793-2877
F: (312) 793-1556

Dated: September 20, 2001